

VZCZCXYZ0000
PP RUEHWEB

DE RUEHAK #0048 0121549
ZNY CCCCC ZZH
P 121549Z JAN 09
FM AMEMBASSY ANKARA
TO RUEHC/SECSTATE WASHDC PRIORITY 8439
INFO RUEHIT/AMCONSUL ISTANBUL PRIORITY 5227
RUCPDOC/DEPT OF COMMERCE WASHDC PRIORITY
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY

C O N F I D E N T I A L ANKARA 000048

SIPDIS

EEB/TPP/IPE FOR JOELLEN URBAN
DEPT PLEASE PASS USTR FOR JCHOE-GROVES AND MMOWREY
USDOC FOR ITA/MAC/CRUSNAK, KNAJDI

E.O. 12958: DECL: 01/11/2019
TAGS: KIPR KCRM ECON TU
SUBJECT: TURKEY SET TO PASS NEW TRADEMARK LEGISLATION, BUT
9000 CASES ALREADY DISMISSED

REF: A. 08 ANKARA 2128
1B. 08 ANKARA 2191

Classified By: Economic Counselor Dale Eppler for reasons 1.4 (b) and (d).

11. (C) As feared, the GOT failed to meet the January 5 deadline for passing new trademark legislation, resulting in the invalidation of approximately 9000 pending trademark cases (see reftels). The Ambassador met with Zafer Caglayan, Minister of Industry and Commerce, to express his concern on this issue and to request an update on the GOT's strategy moving forward. According to Caglayan, a new amendment was introduced on January 5 that is designed specifically to address the trademark provisions invalidated by the Constitutional Court. This amendment was given the highest priority and has already passed through the two relevant Parliament committees. Caglayan assured the Ambassador that the legislation would be brought to the full Parliament and passed no later than January 14. (Comment: Post's initial review of the amendment is that it will restore the status quo ante and also make Internet-based trademark infringement a crime. End comment.)

12. (C) While this is good news for the future, there does not appear to be any remedy for the 9000 cases which were dismissed, and Caglayan offered no strategy for addressing this problem. Post's report in Ref B on the status of previously-adjudicated cases also appears to have been in error. Those convicted under the prior trademark law will in fact have the right to appeal their cases on an individual basis. However, according to Hulya Cetin (a judge at the Ministry of Justice), the relevant IPR judges have reached an informal agreement on how they will handle these appeals. If a case is appealed, the judge will vacate the conviction on the grounds that the specific crime is no longer applicable. The judge will then find the appellant guilty of violating the "unfair competition" provision of the commercial code. The penalty for this crime is less than that of the trademark law (1 month to 1 year vice 1 to 2 years), but the judges hope that this strategy will keep a flood of counterfeiters from immediately returning to the streets.

Visit Ankara's Classified Web Site at
<http://www.intelink.sgov.gov/wiki/Portal:Turkey>

Jeffrey